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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/838,878	04/20/2001	Stephen Nabeil Malik	9192-2	3309
7590 01/12/2006 Needham J. Boddie, II Myers Bigel Sibley & Sajovec Post Office Box 37428 Raleigh, NC 27627			EXAMINER SMITH, TRACI L	
			ART UNIT 3629	PAPER NUMBER

DATE MAILED: 01/12/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/838,878

Applicant(s)

MALIK, STEPHEN NABEIL

Examiner

Traci L. Smith

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 24 October 2005.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 8, 11-15, 17, 25, 28-31, 33, 41, 44-47 and 49 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 8, 11-15, 17, 25, 28-31, 33, 41, 44-47 and 49 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

1. This action is in response to papers filed on October 24, 2005.
2. Claims 8, 11-15, 17, 25, 28-31, 33, 41, 44-47 and 49 are pending.
3. Claims 8, 11-15, 17, 25, 28-31, 33, 41, 44-47 and 49 are rejected.

Claim Rejections - 35 USC § 103

4. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

5. The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

6. Claims 8, 11, 17, 25, 28, 33, 41, 44 and 49 are rejected under 35 U.S.C. 103(a) as being unpatentable over [www. Bestdoctors.com](http://www.Bestdoctors.com); retrieved wayback machine anylinkage January 25, 1999 in view of US Patent 6,589,169 Surwit et al Systems, Methods and Computer Program Products for Monitoring Diagnosing and treating medical conditions of remotely located patients undergoing anticoagulation therapy.
7. As to Claims 8, 25 and 41:

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8. Bestdoctors.com teach accepting information from a patient(Pg. 4 ¶ 1)

Assigning patients and providers based on attributes entered by patient(Pg. 2 ¶ 2-4).

Providers viewing information(Pg. 2 ¶ 5)

Providing a secure area to diagnosis or treat patient(Pg 14 Ref. C).

However bestdoctors.com fail to teach notifying patient when provider has submitted treatment and/or diagnosis as well as patients accessing treatment/diagnosis and selecting treatment option. Surwit teaches communicating treatment information via wireless, email fax etc.(C. 3 l. 15-18). It would have been obvious to one skilled in the art to combine the teachings of Surwit with Bestdoctors.com so as to allow the user getting a faster response when ill and ability to view it without having to leave their house. As to user selecting treatment option presented to them. The examiner notes it is old and well know in the field of medicine that a doctor presents the patient with all possible treatment options and the ultimate decision is left up to the patient.

9. As to claims 11, 28 and 44 bestdoctors.com teaches interfaces that algorithms that ask appropriate questions to build a complete medical record.

As to claims 17, 33 and 49 bestdoctors.com fails to teach allowing patient to select prescription for treatment in a secure areas(C. 3 l. 15-18)). It would have been obvious to one skilled in the art to combine the teachings of Surwit with Bestdoctors.com so as to allow the user getting a faster response when ill and ability to view it without having to leave their house. As to user selecting

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treatment option presented to them. The examiner notes it is old and well known in the field of medicine that a doctor presents the patient with all possible treatment options and the ultimate decision is left up to the patient.

10. Claims 12-14, 29-31 and 45-47 are rejected under 35 U.S.C. 103(a) as being unpatentable over Bestdoctors.com; retrieved wayback machine anylinkage January 25, 1999 in view of US Patent 6,589,169 Surwit et al Systems, Methods and Computer Program Products for Monitoring Diagnosing and treating medical conditions of remotely located patients undergoing anticoagulation therapy as applied to claims 8, 11, 17, 25, 28, 33, 41, 44 and 49 above, and further in view of US Patent 5,542,420; Goldman et al. Personalized Method and System for Storage, Communication, Analysis and Processing of Health Related Data.

11. As to claims 12-24, 29-31 and 45-47 bestdoctors.com and Surwit teach a system and method for providing healthcare services to patients. However, bestdoctors and Surwit fail to teach sending prescriptions and lab requests to the respective facilities for processing and displaying the results to the user. Goldman teaches sending prescriptions to pharmacies(C. 4 I. 25-28) Sending lab requests to laboratories(C. 17 I. 56-59) and presenting results to the user(C. 17 I. 61-63). It would have been obvious to one skilled in the art at the time of invention to combine the teachings of Goldman with bestdoctors.com and Surwit so as to allow a quick processing of request and getting treatment recommendations to a patient in a quick efficient manner.

12. Claims 15, 31 and 47 are rejected under 35 U.S.C. 103(a) as being unpatentable over Bestdoctors.com; retrieved wayback machine any linkage January 25, 1999 in

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view of proquest article "Community Health Networks: Healthcare technology for the 21st Century. Calvin Wiese; Aug. 15, 1999.

13. As to claims 15, 31 and 47 bestdoctors.com and Surwit teach a system and method for providing healthcare services to patients which patients are identified. However, bestdoctors and Surwit fail to teach verifying that the patient is eligible to receive services. Wiese teaches a health identity used by the health providers to establish a users identity with a health enterprise(ie insurance membership)(Pg. 4 ¶ 10). It would have been obvious to one skilled in the art at the time of invention to combine the teaches of Wiese with bestdoctors.com and Surwit so as to continue to be compliant with HIPPA and allow confidentiality of the persons health records and provide services to those individuals from Doctors that are covered by their insurance company.

Response to Arguments

14. Applicant's arguments filed October 24, 2005 have been fully considered but they are not persuasive.

15. As to applicants arguments regarding "accepting entry of information about a medical condition of a patient". The applicant argues that the patient fails to enter information regarding a "specific" medical condition. However, the applicant does not positively recite in the claims a "specific" medical condition nor identify what is considered a "specific" medical condition. Therefore any information input by the patient concerning their health and/or medical history can be read as "medical condition" information. As to applicants arguments regarding the information not being

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entered via a "web-based client" the examiner notes that bestdoctors.com is a website in which a patient enters their information therefore is inherently a web-based client.

16. As to applicants arguments regarding the assigning of patients to a "pool".

Examiner notes the category assignment is done with several databases, the claims do not specifically identify how the patients are being assigned to the doctors. If applicants arguments are intended to address the approach that the web-based system is assigning the patients, which is not clear on how the system is assigning the patients, the examiner the process of automating the search process for the appropriate assignment does not patentably distinguish the instant application over the prior art. *In re Venner*, 120 USPQ 192, 194; 262 F2d 91 (CCPA 1958)

17. As to applicants arguments regarding viewing patient information. Again the examiner notes patient information is a broad statements and can be broadly interpreted.

18. As to applicants arguments regarding the "secure" area of the website. The examiner notes the patient has to have user id and password in which the website verifies upon entering the side and providing information to the patient, which is inherently a secure area in which the patient logs into to receive the new information.

Conclusion

19. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Traci L. Smith whose telephone number is 572-272-6809. The examiner can normally be reached on Monday-Thursday 6:00 am-4:30 pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, John Weiss can be reached on 571-272-6812. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

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